

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION**

TENTATIVE RULINGS

EVENT DATE: 11/12/2015
JUDICIAL OFFICER: Kevin DeNoce

EVENT TIME: 08:20:00 AM

DEPT.: 43

CASE NUM: 56-2014-00454766-CU-OE-VTA
CASE TITLE: JEANETTE MUNDEN VS LOS ROBLES REGIONAL

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Other employment

EVENT TYPE: Motion to Quash Subpoena (CLM) - Motion to Quash Deposition Subpoena
CAUSAL DOCUMENT/DATE FILED: Motion to Quash Subpoena, 10/16/2015

With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you may submit a telefax to Judge DeNoce's secretary, Hellmi McIntyre at 805-662-6712, stating that you submit on the tentative. Do not call in lieu of sending a telefax, nor should you call to see if your telefax has been received. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

The court's tentative ruling is as follows:

Deny the Motion to Quash. The facts favor disclosure, subject to redacting the co-workers names (and any SSNs or financial information).

Discussion:

Separate Statement:

California Rule of Court 3.1345(b) provides, in pertinent part, that "a separate statement is not required when no response has been provided to the request for discovery. Here, there is no evidence that HRN Services responded to Defendant's Subpoena. Accordingly, no Separate Statement is required. (Regardless, the Court has the discretion to consider the Motion to Quash notwithstanding a violation of Rule 3.1345. (See *Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 893.) There is no showing that Defendants have been prejudiced by Plaintiff's failure to file a Separate Statement. Nor is it apparent how a Separate Statement would have clarified any of the issues raised by the Motion.

CCP §1987.1 establishes the basis for a motion to quash a subpoena:

"When a subpoena requires the attendance of a witness or the production of books, documents or other things before a court, or at the trial of an issue therein, or at the taking of a deposition, the court, upon motion reasonably made by the party, the witness, or any consumer described in Section 1985.3, [...] may make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare, including protective orders. In addition, the court may make any other order as may be appropriate to protect the parties, the witness, or the consumer from unreasonable or oppressive demands including unreasonable violations of a witness's or consumer's right of privacy. Nothing herein shall require any witness or party to move to quash, modify, or condition any

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subpoena duces tecum of personal records of any consumer served under paragraph (1) of subdivision (b) of Section 1985.3."

The subject subpoena is attached as Exhibit A to Cody Kennedy's Declaration and requests production of documents and records pertaining to the employment of JEANETTE MUNDEN including: "APPLICATIONS FOR EMPLOYMENT, RESUMES, INTERVIEW NOTES, NEW HIRE DOCUMENTS, EMPLOYMENT AGREEMENTS, BENEFITS AND INSURANCE PACKAGE, PAYROLL RECORDS, ATTENDANCE RECORDS, TIME CARDS AND/OR TIME SHEETS, PERSONNEL FILES, MANAGER AND/OR SUPERVISOR FILES, PERFORMANCE EVALUATIONS AND REVIEW, JOB DESCRIPTION AND/OR JOB ANALYSES FOR ANY POSITIONS HELD BY MS. MUNDEN, COMPLAINT BY EMPLOYEES ABOUT MS. MUNDEN, COMPLAINTS BY MS. MUNDEN ABOUT EMPLOYEES, DISCIPLINARY ACTIONS PERTAINING TO MS. MUNDEN, TERMINATION DOCUMENTS PERTAINING TO MS. MUNDEN."

Since the requested documents implicate Plaintiff's privacy rights, the initial burden is on Defendants to demonstrate that the information sought by the subpoena is both (i) directly relevant to claims or defenses in this action (Britt v. Sup.Ct. (1978) 20 C3d 844, 859); and (ii) not available through a less intrusive means of discovery (*Allen v. Sup. Ct.* (1984) 151 Cal.App.3d 447, 453.). If Defendant satisfies its initial burden, then the Court must balance Defendant's need for the discovery with Plaintiff Munden's and/or others' privacy interests to determine the extent to and the conditions under which production may be ordered. (See, *Valley Bank of Nevada v. Sup.Ct.*, 15Cal.3d 658.)

Plaintiff's claims are based on her work as an RN for Los Robles' Thousand Oaks facility. The causes of action in the Complaint do not directly implicate Plaintiff's separate employment with HRN, she made no claims against HRN, and they are not a named party. So, how will any of the information obtained from HRN impact the claims or defenses of the Complaint? D argues that the evidence will show that P knew her rights/obligations. But P's knowledge of her rights/obligations is neither an element of, nor a defense of, the causes of action in the Complaint.

Here, Defendant contends that the subpoenaed records of HRN are relevant to the issues of P's credibility and ability to serve as class representative, as well as its defenses. D argues that the subpoenaed evidence will show that P had a habit of filing complaints against her employers and accusing colleagues of misconduct. Evidence that shows a history of unfounded complaints/accusations against her colleagues and employer may be used to successfully attack Plaintiff's credibility. Petitioner's credibility is relevant in a class action case since the proposed class representative is required to assume fiduciary obligations to members of the class. (See, *La Sala v. American Sav. & Loan Ass'n*, (1971) 5 Cal.3d 864, 871.) Evidence uncovered regarding Plaintiff's actions in her concurrently held RJN Services job(s) may also lead to admissible evidence of her honesty, and integrity. Her conduct in concurrent employment is arguably relevant. The court concludes that D is entitled to the discovery request, as there it appears reasonably calculated to lead to the discovery of at least some admissible evidence.

Availability:

There do not appear to be any potentially less intrusive means of discovery that have not been exhausted. Defendant's are attempting to go directly to the source of the information; HRN. They made some inquiries into whether Plaintiff herself has the documents and she indicated that she probably does not. The Defendant has satisfied its initial burden of showing the potential relevance of the requested discovery, and that the information is not available through a less intrusive means.

Privacy rights:

Plaintiff argues that the subpoenaed records may include other employees' and supervisors/managers' information. The category that most likely *may* produce others' information is the request for "manger and/or supervisor files," "complaints by employees about Ms. Munden," and "complaints by Ms. Munden about employees." It is not clear that anything other than employees or managers/supervisors names and/or positions would be produced. The redaction of the employees names would be appropriate to eliminate any privacy concern but not the manager/supervisors names as the later is not private information? The court sees no privacy concerns with the production of manuals, agreements, and policies. Overall, the facts favor disclosure, subject to potentially redacting the co-workers names (and any SSNs or financial information).

Scope of the Subpoena, CCP §2020.410:

CCP § 2020.410(a) says that a "deposition subpoena that commands only the production of business records

for copying shall designate the business records to be produced either by specifically describing each individual item or by reasonably particularizing each category of item." It is true that the subpoena requests "**all** records and/or documents" related to Plaintiff, and then lists a series of categories, "including but not limited to." The scope of the request here may appear quite broad but it is actually sufficiently limited. First, it is only those records that refer, relate or pertain to **Plaintiff's** employment. We are only talking about one individual here. Second, Plaintiff was only accepting nursing assignments from HRN from 2009 to 2012 or 2013, so the scope of the records is implicitly limited in time to a period of 3 or 4 years as opposed to the 10 years in *Calcor*. And third, unlike in *Calcor*, Defendant Los Robles is not a competitor of RJN and is not seeking documents related to RJNs business or operations.